

LEGAL ASPECTS OF PUBLIC WORK ON CLASSIFIED INFORMATION IN THE REPUBLIC OF SERBIA

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Abstract: *This work sets out to analyze the most important legal concepts of the Classified Information Law, noting that this field is yet to be regulated in detail by a subsequent set of by-laws to clarify a number of issues related to its practical implementation. Considering the applicable legal solutions envisaged so far by the Serbian legal system for the field of the classified information protection, we can conclude that numerous regulations in this area have not been brought in line with contemporary and generally accepted international standards and comparative legal experience, which has resulted in an inadequate protection of national classified information, as well as in impeded cooperation in the process of sharing classified information with other countries and international organizations. Democratization of societies, which concerns countries in transition in the present-day situation, has to be based on the principles of rule of law and welfare state, transparency and open society, which imply the reaffirmation of the public sphere. It should be noted that one of the objectives underlying the passage of this law was to enable transparency of work performed by all public authorities in various fields of their activities by considerably reducing the application of discretionary rights and arbitrariness when processing any kind of information.*

Keywords: *politics, national security, law, human rights*

1. INTRODUCTORY REMARKS

This work sets out to analyze the most important legal concepts introduced into the Serbian legal practice with the passage of the Law on classified information, while noting that this field is yet to be regulated in detail by a subsequent set of by-laws to clarify a number of issues related to its practical implementation. The first step on this path is to harmonize national regulations in the field of security with the EU and the Council of Europe standards relating to the protection of guaranteed human freedoms and rights and the achievement of both national and regional security interests. The second step would be to implement these legal solutions in the society and translate them into procedural and organizational practices of public authorities. The reform of the national system of classified information

protection is one of the most important projects relating to the security system reform that Serbia has been facing in these processes. Considering the applicable legal solutions envisaged by the Serbian legal system for the field of the classified information protection so far, we can conclude that numerous regulations in this area were not in line with contemporary and generally accepted international standards and comparative legal experience which resulted in an inadequate protection of national classified information and impeded cooperation in the process of sharing classified information with other countries and international organizations [1]

Some experts [2] in this field consider the security measures to be a set of activities, actions and procedures undertaken (independently or in cooperation with other persons) by the entities within the national security system in order to switch over from the state of the day-to-day organizational, personnel, financial, technical and functional capabilities to the state of heightened alert for carrying out security functions and assignments, whose complexity and gravity differ from everyday activities - routine engagements. According to the method of organizing access to classified information, its processing was based on the departmental model, namely there were a number of rounded-off normative areas, in particular within the following systems: defense, foreign affairs, internal affairs and the Security Information Agency (after separating the state security department from the internal affairs system), the Justice Ministry (enforcement of prison sanctions and judicial authorities), the National Bank of Serbia, as well as other public administration bodies. The reform of the classified information protection essentially implies the following: 1) the national security system reform; 2) the constitutional and legal amendments through the harmonization with the EU regulations and standards in this area; 3) the education and trainings of the personnel directly involved in generation and protection of classified information; 4) the evaluation on the part of international institutions by establishing the process of bilateral cooperation and working together with the EU and NATO; 5) translating positive and negative practical experiences into adequate by-laws.

2. THE LAW ON CLASSIFIED INFORMATION

The Law on Classified information was adopted in 2009 (Official Gazette of the Republic of Serbia, No 104/2009) in order to introduce and institutionalize a uniform system for identifying and protecting classified information of interest to the country's national security, public security, defense, internal and foreign affairs, foreign classified information protection, access to classified information and termination of its classification, remits of the relevant authorities and supervision of the its implementation, as well as the responsibility for non-compliance with the obligations stemming from this law and other issues of relevance for the classified information protection. This law is structured around the following sections: General provisions; Determination of classified information; Measures for the protection of classified information; Access to classified information; Procedure for issuing security clearances or security permits; Control and supervision; Penal provisions, and Transitional and final provisions. Since its promulgation in December 2009, a number of related by-laws have been adopted by virtue of this law.

3. WORK ON CLASSIFIED INFORMATION

Work on classified information is regulated by a number of systemic regulations, the most important among them being the following: the Law on the free access to information of public importance, the Law on the protection of personal data and the Law on Classified Information. The processing of classified information is also governed by the regulations enacted in the area of defense, internal affairs, health, security services, etc. Information in most general terms can be divided into several categories: public information available to the general public and disseminated by various communications media due to which it is called "open information" in professional circles. Then, there is information with restricted access for various legal reasons, namely: 1) information of interest to the Republic of Serbia, comprising any information or document possessed by the public authority within the meaning of the Law on classified information relating to the territorial integrity, protection of constitutional order, human and minority rights and fundamental freedoms, national and public security, defense, internal and foreign affairs of the country. Therefore, in the formal sense of the word, such information is declared classified by virtue of the relevant law, other regulation or a decision of the competent authority and identified and marked adequately with one of the following classification levels: RESTRICTED, CONFIDENTIAL, SECRET and TOP SECRET; 2) Personal data imply any information relating to an individual i.e. a natural person, regardless of the form in which it is recorded and its storage medium, (paper, tape, film, electronic medium and the like), and irrespective of the circumstances under which such information is stored, the method of obtainment (by listening or watching, through access to a document, etc.) and other properties of that information. Therefore, personal data are any information relating to a natural person if he/she is identified or identifiable. 3) Trade secrets are regulated by separate provisions governing the medical, psychiatric or psychological practice, lawyering or clerical vocation and are not included in the area of the classified information protection 4) Professional secrets belong to an area which is not as yet adequately addressed under existing regulations and are reduced to the legal ground only in the form of an article in the Law on companies which leaves the issues of processing and criteria to companies for further regulation. The requirements relating to professional secrets should be determined similarly to the criteria envisaged by the Law on Classified Information, which means according to the form and extent of the damage caused to companies as a result of an authorized disclosure.

4. THE PROCESSING WHEN THE PUBLIC HAS A JUSTIFIED INTEREST IN KNOWING THE INFORMATION

The provisions of the Law on public information [3] regulates the right to public information as the right to freedom of expression and the rights and duties of participants in the process of disseminating public information. The right to public information implies the freedom of expression, gathering, investigating, releasing and disseminating ideas, information and opinions, as well as of printing and distribution of newspapers and the press, the freedom of production and broadcasting radio and TV programs. The said right also includes the freedom to receive ideas, information and views. and to establish other legal persons dealing with public information. The press is free to publish ideas, information and opinions on various phenomena, events and persons that the public has a justified interest to be informed about, except when it is otherwise provided by the law which is applied re-

gardless of the manner in which information has been obtained. Government and political office holders have a limited right to privacy protection if the information related to them is of relevance to the public, given that their right to privacy is restricted in proportion to the public interest in knowing the information related to them. The provisions of the Law on the responsibility for human rights violation [4](lustration) regulating or rather determining the following: - forms and aspects of human rights violation as a basis for investigating such responsibility; - individuals who undergo the procedure for investigating the responsibility for human rights violation; - principles and rules of the procedure for investigating the responsibility for human rights violation; - composition, competence and procedures applied by the relevant authorities; and – measures imposed on individuals who have been found responsible for violating human rights. It is interesting to note that the applicable procedure under this law this law that is carried out without consent of the individual concerned. The relationship between free access to information and accomplishment of tasks to protect classified information is one of the newly emerging issues in practice. According to the Law on free access to information, the public is to be provided access to classified information. However, the provisions of Article 9 stipulate certain exceptions relating to the following 1) the national security; 2) the public security; 3) commercial and other public and private interests of economic nature; 4) the national economic, monetary and foreign currency policies; 5) prevention, investigation and prosecution of criminal offences; 6) privacy and other individual rights; 7) processing and enactment of official documents. Furthermore, the implementation of the Law on free access to information is made more difficult by the fact that it was adopted before the Law on the protection of personal data (2008) at the time when the Law on classified information was not in place, although it should have preceded the above two legal acts as an umbrella law to facilitate the implementation of the Law on free access to information.

5. OBLIGATIONS STEMMING FORM THE LAW ON CLASSIFIED INFORMATION

[Note:these obligations apply to activities on foreign classified information only until the criteria for work on information classified as TOP SECRET, SECRET, CONFIDENTIAL and RESTRICTED are determined and regulated.]

The Law on classified information has introduced a new systemic approach to the classified information protection in the Republic of Serbia which is based on applicable EU and NATO security, legal and technical standards which are also implemented in the legal systems of the neighbouring countries. The law itself has imposed certain obligations on the public authorities which are as follows: 1) drafting of by-laws and determining criteria for the RESTRICTED and CONFIDENTIAL classification level; 2) drafting of by-laws relating to a number of special protection measures; 3) harmonizing the current regulations relating to work on classified information (office management, etc.) with the current Law on classified information. 4) amending international agreements involving the exchange of classified information and establishing separate registries for that purpose. 5) modifying the existing rule books on internal organization, job systematization or formation posts by introducing classification levels to which employees may have access to when carrying out their duties; 6) drafting of documents on transmission of classified information, application of general and special measures, etc; 7) designating a security officer in the public authority and establishing the registry system for work on the national classified information; 8) setting up

a continuing education system in the area of classified information protection; 9) keeping official records in line with the Law on classified information 10) establishing direct cooperation and communication with the Office of the National Security Council and Classified Information Protection 11) developing internal regulations on INFOSEC i.e., Information Assurance.

6. CONCLUSIONS

“A journey of a thousand miles begins with a first step“.The Republic of Serbia has been making great efforts to regulate the issues of generating and processing classified information in the legislative area while implementing in-depth reforms in the security (and defense) sectors. The first step in that direction was made by putting the Law on Classified Information in place in 2009 and the next one will be the passage of an adequate law on Information Assurance to be followed by a set of pertinent by-laws to fully regulate this area. However, the legislative activities in that area are somewhat delayed due to the complexity of its scope which will require modifications of other legal acts in line with the present practice and international standards. The implementation of the Law on classified information itself will facilitate the establishment of cooperation at the highest level between the Republic of Serbia, NATO and EU defense systems, thus enabling members of the Serbian Defense Ministry and Armed Forces (including representatives of other state authorities and legal persons) to take part in various international activities that involve access to particular classified information.

Moreover, one of the purposes of this law is to facilitate the transparent functioning of all public authorities in their varied scope of activities by substantially limiting their discretionary rights and arbitrariness in the course of processing any kind of information. Finally, it should be mentioned that the issues relating to the archival materials kept by the public authorities and the question of opening so-called “classified files“ are not the subject of this law whose purpose is to regulate only activities on classified information as and when it is generated.

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